

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

CHRISTOPHER CAMERON and KATIE CAMERON, as Guardians Ad Litem for S.C., a minor, Plaintiffs, vs. SISSETON SWIMMING POOL ASSOCIATION, INC., CITY OF SISSETON, SOUTH DAKOTA, and DAVID STAUB, Defendants.	Civ. <u>20-1004</u> COMPLAINT AND DEMAND FOR A JURY TRIAL
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COME NOW the Plaintiffs, Christopher Cameron and Katie Cameron, as Guardians Ad Litem for S.C., a minor, for their Complaint against the above-named Defendants, and hereby state and allege as follows:

PARTIES

1. Plaintiffs Christopher Cameron and Katie Cameron (“Plaintiffs”) are residents of West Fargo, Cass County, North Dakota, and are the father and mother, respectively, of S.C., a minor born on July 4, 2011, who is also a resident of West Fargo, Cass County, North Dakota. Plaintiffs were appointed Guardians ad Litem of S.C. by the Honorable Susan L. Bailey of the East Central Judicial District of North Dakota (Case No. 09-2020-CV-00193) on January 21, 2020. The Order Appointing Guardian Ad Litem and Letters of Guardianship Ad Litem are attached hereto. Plaintiffs are citizens of the State of North Dakota.

2. To the best of Plaintiffs' knowledge, Defendant Sisseton Swimming Pool Association, Inc. ("the Association") is a domestic nonprofit corporation that operates and maintains a swimming pool ("the Pool") located in Sisseton, Roberts County, South Dakota, located at 11709 461st Avenue, Sisseton, South Dakota, 57262-7025. The Association is a citizen of the State of South Dakota.

3. To the best of Plaintiffs' knowledge, Defendant Sisseton, South Dakota ("the City") is a municipality located in Roberts County, South Dakota. The city is a citizen of the State of South Dakota.

4. To the best of Plaintiffs' knowledge, Defendant Dr. David Staub ("Dr. Staub") is a resident of Sisseton, Roberts County, South Dakota. Dr. Staub is a citizen of the State of South Dakota.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of costs, and it is between citizens of different states.

6. Venue in the United States District Court for the District of South Dakota is proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims and causes of action occurred in this judicial district, and because the Defendants were subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

FACTS

7. Dr. Staub created the Association in 1982 and, through the Association, raised funds to construct the Pool, which was originally intended to be turned over to the City for operation after construction was completed.

8. Dr. Staub has been involved in the Association as a Director since its founding, and he has been the President of the Association since at least 1987.

9. In 1992, the Association amended its Articles of Incorporation to change the duration of the Association to perpetual. The Association was originally intended to endure until construction was completed and the City took over the Pool's operation.

10. Based on Plaintiffs' information and belief, the Pool is funded by a combination of contributions from the Association, Dr. Staub personally, and the City.

11. In recent years, the City has allocated \$35,000.00 of its budget to fund the Association to run the Pool. This is approximately two-thirds of the annual operating budget of the Pool.

12. During certain months of the year, including the summer months, the Pool is open to the public.

13. The City provides yearly funding to the Pool. The City also participates in the day-to-day operation of the pool, jointly with the Association and Dr. Staub. Further, the City oversees and monitors the operation of the Pool by, among other things, insisting upon access to the Pool's Profit and Loss Budget Overview, participating in the allocation of funds from the Association's budget, and requesting and reviewing information regarding the Pool's operations.

14. In 2017, the City's Risk Management survey conducted by the City's insurance provider, South Dakota Public Assurance Alliance, deemed the Sisseton Swimming Pool a "Population to Protect."

15. On July 14, 2019, S.C. and her family attended an event called "Celebrate Sisseton Days," which is an annual event organized by the City.

16. On July 14, 2019, the Pool held an open swimming session for the community of Sisseton as part of "Celebrate Sisseton Days."

17. On July 14, 2019, S.C. and her younger sister, C.C., along with their mother, went to the Pool and swam. Numerous other members of the public also swam at the Pool during the open swim session, including children.

18. On or about the evening of July 15, 2019, S.C. began to feel unwell. She developed gastrointestinal symptoms the following day, July 16, 2019, including abdominal cramps and diarrhea. This illness, described in more detail below, would later be confirmed as an *E. coli* O157:H7 infection.

19. On or about the date that S.C.'s symptoms began, other children in the Sisseton area who, like S.C., swam at the Pool on July 14, 2019, during the "Celebrate Sisseton Days" event, would also become ill with severe gastrointestinal symptoms. In total, at least four children who swam at the Pool on July 14, 2019, are known to have developed gastrointestinal symptoms within several days of July 14, 2019.

20. All Defendants in this action were served with written notice of the time, place, and cause of S.C.'s injury within 180 days after the injury occurred on or about July 14, 2019, in compliance with SDCL 3-21-2. Dr. Staub received written notice via certified mail

on October 31, 2019. All other Defendants received written notice via certified mail on October 21, 2019.

***E. coli* O157:H7 Infection and Hemolytic Uremic Syndrome**

18. *Escherichia coli* is the name of a common family of bacteria, most members of which do not cause human disease. *E. coli* O157:H7 is a specific member of this family that can cause bloody diarrhea (hemorrhagic colitis) in humans. In the years since *E. coli* O157:H7 was first identified as a cause of diarrhea, this bacterium has established a reputation as a significant public health hazard.

19. *E. coli* O157:H7 lives in the intestines of cattle and other ruminants. *E. coli* O157:H7 is also notable among pathogenic bacteria for its extremely low infectious dose—that is, the number of bacteria necessary to induce infection in a person. While for most pathogenic bacteria it takes literally millions of bacterial colonies to cause illness, it is now known that fewer than 50 *E. coli* O157:H7 bacteria can cause illness in a child. The practical import is that even a microscopic amount of exposure can trigger a devastating infection.

20. The most severe cases of the *E. coli* O157:H7 infection occur in young children and in the elderly, presumably because the immune systems in those age populations are the most vulnerable. After a susceptible individual ingests *E. coli* O157:H7, the bacteria attach to the inside surface of the large intestine and initiates an inflammatory reaction of the intestine. What ultimately results is the painful bloody diarrhea and abdominal cramps characteristic of the intestinal illness.

21. The mean incubation period (time from ingestion to the onset of symptoms) of *E. coli* O157:H7 is estimated to be two to four days (range, 1-10 days). Typically, a patient

with an acute *E. coli* O157:H7 infection presents with abdominal cramps, bloody diarrhea, and vomiting. The duration of diarrhea in children with *E. coli* O157:H7 infections are significantly longer than that of adults.

22. *E. coli* O157:H7 can produce a wide spectrum of disease from mild, non-bloody diarrhea, to severe bloody diarrhea accompanied by excruciating abdominal pain to life-threatening complications. In most infected individuals, the intestinal illness lasts about a week and resolves without any long-term effects. Antibiotics do not appear to aid in combating these infections, and recent medical studies suggest that antibiotics are contraindicated for their risk of provoking more serious complications. Apart from good supportive care, which should include close attention to hydration and nutrition, there is no specific therapy.

23. About 10% of individuals with *E. coli* O157:H7 infections (mostly young children) go on to develop hemolytic uremic syndrome (HUS), a severe, potentially life-threatening complication. The essence of the syndrome is described by its three central features: destruction of red blood cells, destruction of platelets (those blood cells responsible for clotting), and acute renal failure due to the formation of micro-thrombi that occlude microscopic blood vessels that make up the filtering units within the kidneys.

24. There is no known therapy to halt the progression of HUS. The active stage of the disease usually lasts one to two weeks, during which a variety of complications are possible. HUS is a frightening illness that even in the best American medical facilities has a mortality rate of about 5%. The majority of HUS patients require transfusion of blood products and develop complications common to the critically ill.

S.C.'s Illness and Medical Course

25. S.C. began to feel unwell in the evening on July 15, 2019. She developed diarrhea and abdominal cramps the following day. Less than 24 hours later, her symptoms of diarrhea became bloody.

26. S.C.'s parents brought her to Sanford Fargo Medical Center for treatment on or about July 17, 2019.

27. S.C.'s illness was ultimately confirmed to be due to infection by *E. coli* O157:H7. She developed hemolytic uremic syndrome (HUS) and suffered severe and permanent kidney injury, requiring dialysis to save her life. She continued on dialysis until December of 2019, and had her hemodialysis port removed on December 30, 2019. She is also expected to require serial kidney transplantations over her lifetime.

28. S.C. was hospitalized for her acute *E. coli* O157:H7 infection and HUS illness from July 17, 2019, to September 11, 2019, at various medical facilities. In addition to kidney failure, which is ongoing, S.C. suffered from a cervical arterial bleed, severe colitis, pancreatitis, and other severe and life-threatening complications from her HUS illness.

29. With respect to her dialysis treatments, S.C.'s parents drove her four hours each way from their home in West Fargo twice weekly for three-hour dialysis sessions at University of Minnesota Masonic Children's Hospital in Minneapolis.

30. Currently, S.C.'s treatment team estimates that her kidneys are functioning at approximately 25%. She is required to undergo lab work every two weeks, and receives Eculizumab (Solaris) infusions to treat her HUS.

31. S.C. has missed almost an entire semester of school due to her illness caused by the *E. coli* infection.

32. S.C. was determined by South Dakota public health professionals to be one of numerous cases of *E. coli* O157:H7 infection among persons who swam at the Pool on July 14, 2019.

33. As a direct and proximate result of the injury caused by the *E. coli* contamination at the Pool, S.C. has sustained injuries and trauma, including, permanent, irreversible, and severe kidney injury. She now suffers from chronic, progressive kidney injury that will progress to end stage kidney disease (ESKD) and will ultimately require multiple kidney transplantations during her lifetime. As a result, she is at significantly increased risk of cardiovascular disease and related complications as well. S.C. has suffered severe and permanent physical and emotional injury as a result of her *E. coli* O157:H7 infection. Additionally, S.C. has experienced pain and suffering, loss of enjoyment of the capacity of life, past and future medical costs and expenses, and other general and special damages.

COUNT I
Negligence
(All Defendants)

34. Plaintiffs hereby re-allege all previous paragraphs of this Complaint and hereby incorporate them as if fully set forth herein.

35. The Association, the City, and Dr. Staub owed a duty of care to S.C. to exercise ordinary care in operating and maintaining a safe swimming pool for all pool invitees.

36. At the time of S.C.'s injury, on or about July 14, 2019, Defendants negligently and carelessly departed from the proper standard of care by, among other things, failing to maintain proper Pool water chemistry including effective sanitizer levels, failing to properly inform the public invitees of measures necessary to avoid pathogenic bacterial contamination of the Pool water, and failing to take measures to eliminate the specific risk of pathogenic *E. coli* contamination of the Pool water, which caused S.C., a pool attendee, to become infected and fall severely ill.

37. As a direct and proximate cause of Defendants' negligence, S.C. has sustained injuries, including, but not limited to, personal injuries; past, present, and future pain and suffering; loss of enjoyment of the capacity of life, emotional distress; past and future medical costs and expenses; and other general and special damages; all of which are compensable under South Dakota law.

38. Dr. Staub should be held personally liable for the negligent actions of the Sisseton Swimming Pool Association in allowing the Pool to become contaminated with *E. coli*. Sufficient reasons exist to hold Dr. Staub personally liable for the acts of the Association as a corporation.

COUNT TWO
Premise Liability
(All Defendants)

39. Plaintiffs hereby re-allege all previous paragraphs of this Complaint and hereby incorporate them as if fully set forth herein.

40. S.C. was a public invitee on Defendants' property. She was a member of the public who was invited to enter or remain at the Pool for the purpose for which the Pool is held open to the public, which is swimming recreation.

41. Defendants owed S.C. a duty of exercising reasonable or ordinary care for her safety.

42. Defendants breached their duty of reasonable care for S.C.'s safety on or about July 14th, 2019, by, among other things, failing to maintain proper water chemistry including effective sanitizer levels, failing to properly test water for key chemical parameters, failing to properly deal with fecal accidents in the pool, failing to properly inform the public invitees of measures necessary to avoid pathogenic bacterial contamination of the water, failing to properly educate and instruct Pool staff, and failing to take measures to eliminate the specific risk of pathogenic *E. coli* bacterial contamination of the Pool.

43. As a direct and proximate cause of Defendants' breach of their duty, S.C. has sustained injuries, including, but not limited to: personal injuries; past, present, and future pain and suffering; loss of enjoyment of the capacity of life, emotional distress;; past and future medical costs and expenses; and other general and special damages; all of which are compensable under South Dakota law.

WHEREFORE, Plaintiffs respectfully pray for damages against the Defendants as follows:

- (1) For S.C.'s compensatory, general and special damages in an amount that the jury deems just and proper under the circumstances;
- (2) For S.C.'s costs and disbursements herein;

- (3) For prejudgment and post-judgment interest; and
- (4) For such other and further relief as the Court determines to be just and proper.

Dated this 24th day of January, 2020.

**HEIDPRIEM, PURTELL
SIEGEL & HINRICH, L.L.P.**

BY 

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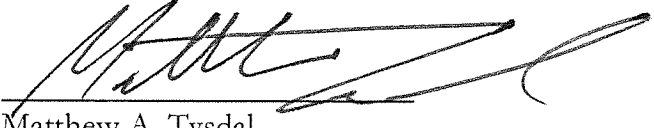
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DEMAND FOR JURY TRIAL

Plaintiffs hereby respectfully demand a trial by jury on all issues so triable.


Matthew A. Tysdal

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CHRISTOPHER CAMERON and KATIE CAMERON, as Guardians Ad Litem for S.C., a minor,

(b) County of Residence of First Listed Plaintiff Cass County, ND
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Heidepriem, Purtell, Siegel & Hinrichs, LLP, 101 W. 69th St., Sioux Falls, SD 57108, 605-679-4470

DEFENDANTS

SISSETON SWIMMING POOL ASSOCIATION, INC., CITY OF SISSETON, SOUTH DAKOTA, and DAVID STAUB

County of Residence of First Listed Defendant Roberts County, SD
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332(a)(1)

Brief description of cause:

Negligence and Premises Liability relating to Plaintiff Sadie Cameron's injury from contracting E. coli

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

01/24/2020

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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